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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1979

Nos. 79-421, 79-425 and 79-435

JOHN M. BRYANT, et al.,
Petitioners,
vs.
BEN YELLEN, et al.,
Respondents.

STATE OF CALIFORNIA, et al.,
Petitioners,
vs.
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IMPERIAL IRRIGATION DISTRICT, et al.,
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RESPONDENTS' RESPONSE TO REPLY BRIEF OF BRYANT PETITIONERS IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

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In the Memorandum in Opposition to the pending petitions, respondents did not consider it necessary to reiterate the conclusions or reasoning of the Court of Appeals. The two opinions of the panel speak for themselves and require little supplemental explanation.

In their Reply Brief, the Bryant petitioners persist in their efforts to manufacture a conflict between the panel's decision on present perfected rights and this Court's decrees in *Arizona v. California*. In doing so, the Bryant petitioners have made an error which respondents wish to bring to the attention of the Court.

In the Memorandum in Opposition, respondents pointed out that neither Secretary Wilbur nor his Executive Assistant Northcutt Ely considered the subject of present perfected rights to be relevant to their consideration of the applicability of the 160 acre limitation to the Imperial Valley. If there was any merit to the argument, presumably those charged with the contemporaneous construction of the Project Act at the time of its adoption would have considered it. In their Reply Brief, the Bryant petitioners suggest that the failure of the Secretary and his Executive Assistant to consider the question of present perfected rights would "have no bearing on the fundamental issue" raised in the present petitions because the documents prepared by Messrs. Wilbur and Ely "predate *Arizona v. California* by four decades". (Reply Br. 2.)

Although the Bryant petitioners imply that present perfected rights have their source in the decrees of this Court, the fact of the matter is that present perfected rights have their origin in Article VIII of the Colorado River compact. (Reproduced in Dist. App. 168a).

The Colorado River compact is part of the Project Act by reason of Section 13a thereof, 43 U.S.C. § 617*l*.

> The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article II of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the Legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided.

The Project Act became effective on June 25, 1929 by Presidential Proclamation (46 Stat. 3000 [1929]), after six states, including California, had ratified the compact and the California legislature accepted the limitation of 4,400,000 acre feet of water per year. *California v. Arizona*, 373 U.S. 546, 558 (1963).

If the concept of present perfected rights had even the remotest possibility of being in conflict with the anti-monopoly provisions of reclamation law, that conflict would certainly have been considered by the Secretary of Interior in 1933 and his Executive Assistant in 1930. This Court did not create the legislative policy of protecting present perfected rights "four decades" later. That policy was present in the statute itself in 1929, when the Project Act became effective. There were no records of individual water rights in the Imperial Valley as of the effective date of the Project Act, and "four decades" later no indi-

vidual landowner has filed a claim to water under the terms of this Court's decree in *Arizona v. California.* (559 F.2d at 528-29, Dist.App.32a) Petitioners' makeweight had no more relevance four decades ago than it has today.

Dated: November 23, 1979, San Francisco, California.

Respectfully submitted,

ARTHUR BRUNWASSER
Attorney for Respondents